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EXAMINER

GOFF II, JOHN L

ART UNIT

PAPER NUMBER

1733

8

DATE MAILED: 01/09/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/737,928

Applicant(s)

STOPPER, STEVEN RAY

Examiner

John L. Goff

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 05 November 2002 (Amendment A).
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18-22 is/are pending in the application.
- 4a) Of the above claim(s) 1-17 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 18-22 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☒ The proposed drawing correction filed on 05 November 2002 is: a) ☒ approved b) ☐ disapproved by the Examiner.
If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). _____
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449) Paper No(s) 5. 6) ☐ Other: _____

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DETAILED ACTION

1. This action is in response to Amendment A filed on 11/5/02. All previous objections to the drawings have been overcome.

Election/Restrictions

2. Applicant's election without traverse of Group II, claims 18-22, in Paper No. 7 is acknowledged.

Claim Rejections - 35 USC § 112

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 21 and 22 stand rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

5. In claim 21, the phrase "two parts" is unclear and confusing. It is uncertain what is meant by the word "parts". Does it mean the co-extruded film and foam composition are sealed together at their interface to form one composite (film and foam) layer? Does it mean the one composite (film and foam) layer is folded on itself to create two composite layers that are then sealed together at the interface of the two composite layers? Does it mean the co-extruded film, foam, and optional nonwoven layers are sealed together at their interface to form one composite (film, foam, and nonwoven) layer? This issue should be clarified and reworded as appropriate.

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Claim Rejections - 35 USC § 103

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

7. Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over DE 19653608 (See Derwent abstract and English translation) in view of WO 98/58799, Kobylivker et al (U.S. Patent 6,002,064), McBride (U.S. Patent 4,880,422), and Winter (U.S. Patent 4,765,999).

DE 19653608 is directed to forming hygiene articles by simultaneously co-extruding a carrier film with a foamed layer. DE 19653608 teaches a carrier film comprising a mixture of low-density polyethylene, very low-density polyethylene, and/or polypropylene (See example 2, lines 7-10 and page 8, lines 5, 6, and 10 of the translation). DE 19653608 teaches a foamed layer comprising a mixture of low-density polyethylene, very low-density polyethylene, and/or polypropylene, fillers, and a blowing agent (See example 2, lines 7-10 and page 8, lines 3-7 of the translation). DE 19653608 teaches co-extruding (multiple-manifold die) the carrier film and foamed layer to form a composite (See page 4, lines 14-25 and page 8, lines 1-3, 11, and 12 of the translation). DE 19653608 is silent as to a specific teaching on extruding the carrier film using a cast extrusion technique. It is noted DE 19653608 suggests extruding the carrier film using a blown extrusion technique (See page 4, lines 12-14). However, DE 19653608 does not exclude extruding the carrier film using a cast extrusion technique. Furthermore, cast and blown extrusion techniques are well known functional equivalents in the art. One of ordinary skill in the art at the time the invention was made would have readily appreciated producing the carrier film taught by DE 19653608 using a blown or cast extrusion technique as both techniques are

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conventional extrusion techniques as shown for example by WO 98/58799, Kobylivker et al, McBride, and Winter.

WO 98/58799 is directed to co-extruded multilayer films for use in personal care products. WO 98/58799 teach the films are formed of a polyolefin (Page 4), and the films are co-extruded using conventional film forming techniques such as cast and blown film forming processes (Page 2 and Page 4 and Page 8). Kobylivker et al are directed to extruded barrier films, including multilayer films, for use in disposable items. Kobylivker et al teach the films are formed of a polyolefin (Column 1, lines 49-52), and the multilayer films are prepared by cast or blown film co-extrusion (Column 7, lines 41-43). McBride is directed to a backsheet for use in a diaper. McBride teaches the backsheet comprises polyolefins (Column 1, lines 14-17), and the backsheet is blown-film or cast-film constructed (Column 2, lines 46-49). Winter is directed to a multilayer bag formed of polyester film. Winter teaches forming the film using conventional blown or cast co-extrusion techniques (Column 2, lines 13-19).

8. Claims 19-22 are rejected under 35 U.S.C. 103(a) as being unpatentable over DE 19653608, WO 98/58799, Kobylivker et al, McBride, and Winter, and further in view of Datta et al (U.S. Patent 5,695,376) and Hunter et al (U.S. Patent 5,810,800).

DE 19653608, WO 98/58799, Kobylivker et al, McBride, and Winter as applied above teach all of the limitations in claims 19-22 except for a teaching of laminating a nonwoven layer to either side of the composite material or thermoforming the composite. However, it is well known in the art to form personal care products with an outer nonwoven layer to provide a cloth-like outercover for contacting the skin as shown by Datta et al and Hunter et al. Datta et al and Hunter et al further show the well-known technique of thermoforming the personal care product

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into a cup-like shape such that leakage is reduced and the product conforms to a user's movements.

Datta et al are directed to thermoformed, cloth-like three-dimensional articles such as personal care products. Datta et al teach a composite material with a nonwoven layer atop a film layer. The film layer gives the composite a liquid barrier property, while the nonwoven layer gives the composite a cloth-like texture (Figure 1 and Column 1, lines 66-67 and Column 2, lines 1-2). Further, the composite is thermoformed through heat and pressure to a cup-like shape that will conform to the user's movements (Figure 1 and Column 1, lines 48-53 and Column 2, lines 8-18). The composite may be sealed adhesively, thermally, or ultrasonically (Column 3, lines 4-15).

Hunter et al are directed to disposable absorbent articles. Hunter et al teach a cup shaped article for reducing leakage and conforming to a user's movements (Figure 1 and Column 1, lines 19-21). Hunter et al teach a nonwoven topsheet useful for reducing excessive discomfort when the article is in contact with the wearer's skin (Column 5, lines 24-27 and 30-34).

Regarding claim 19, it would have been obvious to one of ordinary skill in the art at the time the invention was made to laminate a nonwoven layer to either side of the composite material taught by DE 19653608 as modified by WO 98/58799, Kobylivker et al, McBride, and Winter to provide a cloth-like outercover for contacting the user's skin as was well known in the art as shown by Datta et al and Hunter et al.

Regarding claims 20-22, it would have been obvious to one of ordinary skill in the art at the time the invention was made to thermoform and ultrasonically seal the composite taught by DE 19653608 as modified by WO 98/58799, Kobylivker et al, McBride, and Winter to form a

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composite that is shaped to a user's movement and is less susceptible to leakage as was well known in the art as shown by Datta et al and Hunter et al.

Response to Arguments

9. Applicant's arguments filed 11/5/02 have been fully considered but they are not persuasive. Applicant argues the films taught by DE 19653608 include a blowing agent. The examiner notes DE 19653608 teaches simultaneously co-extruding (multiple-manifold die) a carrier film with a foamed layer. DE 19653608 teaches the carrier film comprises a mixture of low-density polyethylene, very low-density polyethylene, and/or polypropylene (See example 2, lines 7-10 and page 8, lines 5, 6, and 10 of the translation). DE 19653608 further teaches the foamed layer comprises a mixture of low-density polyethylene, very low-density polyethylene, and/or polypropylene, fillers, and a blowing agent (See example 2, lines 7-10 and page 8, lines 3-7 of the translation). DE 19653608 teaches that the carrier film does not require a blowing agent (See page 8, line 10 of the translation). This is further shown in example 2 where the carrier film comprises only 50% LDPE and 50% LLDPE (See example 2, lines 7-10 of the translation). Applicant further argues DE 19653608 describes blown films. As noted above, DE 19653608 suggests extruding the carrier film using a blown extrusion technique (See page 4, lines 12-14). However, DE 19653608 does not exclude extruding the carrier film using a cast extrusion technique. Furthermore, cast and blown extrusion techniques are well known functional equivalents in the art as shown for example by WO 98/58799, Kobylivker et al, McBride, and Winter. Applicant further argues Datta et al and Hunter et al do not teach forming a film/foam composite. The examiner notes Datta et al and Hunter et al are cited only to show the well-

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known techniques of laminating a nonwoven layer to either side of the composite material and thermoforming the composite when the composite material is useful as a personal care product. Applicant further argues Datta et al and Hunter et al do not teach joining two parts together and sealing them at the seam. As noted above, Datta et al teach ultrasonically joining the composite material at a seam to seal the composite material. One of ordinary skill in the art would have readily appreciated ultrasonically joining the carrier film and foam layer taught by DE 19653608 at their interface (seam) to form a sealed composite material.

Conclusion

10. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Heider (U.S. Patent 4,244,900) directed to the co-extrusion of a film and foam (Column 2, lines 14-20). Ellis et al (U.S. Patent 4,701,177) direct to a personal care product having an outer-cover formed of a film and a nonwoven web (Column 4, lines 41-46).

11. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37

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CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

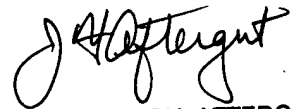
12. Any inquiry concerning this communication or earlier communications from the examiner should be directed to **John L. Goff** whose telephone number is **703-305-7481**. The examiner can normally be reached on M-Th (8 - 5) and alternate Fridays.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Michael Ball can be reached on 703-308-2058. The fax phone numbers for the organization where this application or proceeding is assigned are 703-872-9310 for regular communications and 703-872-9311 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-0661.



John L. Goff
January 6, 2003



JEFF H. AFTERGUT
PRIMARY EXAMINER
GROUP 1300